IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.433 OF 2003

In the matter of Section 433 and 434 and 439 of the Companies Act, 1956;

IL & FS Education & Technology Services Ltd. ..Petitioners.

Vs.

Tulsient Technologies (India) Pvt. Ltd. ..Respondents.

Mr.Anil Menon, Advocate for the Petitioners.

Mr.Sanjay Jain i/b.M/s.Abdi & Co., Advocate for the Respondents.

CORAM: S.U.KAMDAR, J.
DATED: 2ND DECEMBER, 2004

P.C. :

The present Petition is filed for winding up of the Respondent Company under section 433 and 434 of the Companies Act, 1956. The claim in the present Petition is for a sum of Rs.39,65,044/-. Out of the aforesaid amount, a sum of Rs.30 lakhs is towards the principal amount and the balance amount is towards the interest.

2. The claim arises out of the purchase order

placed by the Respondent Company with the Petitioner for supply of website for the mango project. The Respondent has placed a purchase order and, pursuant thereto, the Petitioners have supplied the necessary software and issued an invoice dated 22.3.2001.

3. According to the Petitioner, the said project is duly completed and the Respondent Company has also signed what is known as "Project Sign Off" by their letter dated 1.8.2001. In respect of certain hitches in operation of the said site, correspondence had also been ensued between the parties. But, the same are usual hitches of any software project. In respect of the said supply of software, the Respondent has confirmed an outstanding balance as payable by them to the Petitioner. Since money was not forthcoming from the Respondent Company, statutory notice was issued on 12th November, 2002 calling upon the Respondent Company to make payment of the said debt. In reply to the said notice the Respondent Company offered that the matter should be negotiated and amicably settled. Since no settlement arrived at, the Petitioner has filed the present Petition for winding up of the Respondent Company. The Respondent Company has resisted the present Petition

by filing their affidavit dated 12.2.2004.

4. Three contentions which are raised by the Respondent Company are, one that the purchase order does not reflect the true and correct transaction between the parties that the agreement was to develop the said software for mango company in joint venture and/or partnership and the profits from the said project were to be shared equally. The second contention raised by the Respondent Company is that they never received the invoices and, therefore, there is no liability to pay. The third and the last contention raised is that the confirmation of balance on which Petitioner relies is not genuine and is false.

5. In support of the first contention raised by the learned counsel for the Respondent Company, the learned counsel has taken me through the correspondence commencing from 9.2.2001 and has vehemently contended that the said correspondence indicates that the agreement between the parties was of joint venture and not that of vender and purchaser. The first letter dated 9.2.2001 inter-alia states that a copy of the agreement for the mango project with detailed description is

annexed herewith. The next letter is an email dated 12.2.2001 which inter-alia states that both the parties will go to Zurich. This e-mail message is relied upon by the Respondent Company to contend that the purchase order was issued with the intention to make arrangement of passports and other requirements of travel and not for the purpose of placing an order with the Petitioner. Thereafter, copy of an em-mail dated 10.2.2001 and 11.10.2002 are annexed.

6. I have gone through the correspondence, I am satisfied that there is no document on record indicating that there has been a joint venture and or a partnership in respect of the website preparation for mango project. Apart therefrom, contention of joint venture for the mango project is contrary to their own documents i.e. the purchase order and the balance confirmation as well as the "Project Sign Off" of dated 1.8.2001. I, therefore, do not accept the said defence as bonafide defence to the claim of the Petitioners herein.

7. The next defence raised is that invoices are not received by the Company. On the contrary, the invoice of Rs.16,87,500/- and Rs.13,12,500/- is

confirmed by balance confirmation which has been issued by the Petitioner totalling to the claim of Rs.30 lakhs. Signature on the said balance confirmation is not even denied by the Respondent Company. I, therefore, do not accept the contention of the Respondent Company that no such invoice is received. Apart therefrom, even in reply to the statutory notice, there is no mention that either there was a joint venture or a partnership agreement between the parties and/or that the invoices were never received.

8. This leads me to the last contention that the acknowledgment of liability is forged and fabricated. In so far as the signature is concerned, it is admitted position that it has been signed by the Managing Director of the Respondent Company. Further, the contention raised by the learned counsel for the Petitioner is that the said acknowledgment was not meant for acknowledgment of liabilities but for some different company. I am not inclined to accept this contention also.

9. In the aforesaid circumstances, I pass the following order :

i) The Respondent Company to deposit a sum of Rs.30 lakhs in this Court on or before 31.1.2005. On the said deposit being made, the same to be transferred to the credit of the suit which is already filed being Suit No.1068 of 2004.

ii) On failure to deposit the aforesaid amount, the Petition to stand admitted and Petition to be advertised in Free Press Journal, Janmabhoomi and Maharashtra Government Gazette. The Petitioner to deposit a sum of Rs.2000/- with the Prothonotary and Senior Master towards publication charges.

iii) Petition disposed of accordingly. There shall be no order as to costs.